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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

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THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID EUGENE HODGES,

Defendant and Appellant.

C068700

(Super. Ct. No. NCR78616)

Defendant David Eugene Hodges entered into a negotiated plea wherein he pled guilty to transportation of a controlled substance and admitted he had two prior controlled substance convictions and one prior prison term. (Health & Saf Code, §§ 11379, subd. (a), 11370.2, subd. (c); Pen. Code, § 667.5, subd. (b).) Two additional counts and two prior prison term enhancements were dismissed. After defendant was found ineligible for Proposition 36 probation, the prosecution moved

to dismiss one of the prior controlled substance conviction enhancements and the prior prison term enhancement. The trial court granted the motion and sentenced defendant to an aggregate term of six years in state prison.

Defendant's sole contention on appeal is that the trial court's order that he pay a \$600 restitution fine pursuant to Penal Code section 1202.4 violated the terms of his plea agreement because the fine was not part of the agreement and he was not advised he would be subject to such a fine. We reject this contention and affirm the judgment.

#### **DISCUSSION**

Defendant relies on *People v. Walker* (1991) 54 Cal.3d 1013 (*Walker*) in asserting error here. In *Walker*, the defendant signed a written plea agreement that did not mention or include a restitution fine. (*Walker, supra*, 54 Cal.3d at p. 1019.) Nor was anything said by the parties or the court about a restitution fine during the plea colloquy. The defendant was merely informed by the court that the maximum punishment for his offense included "'a fine of up to \$10,000.'" (*Ibid.*) At sentencing, the trial court imposed a \$5,000 restitution fine that was not discussed as part of the negotiated disposition. The Supreme Court held that the \$5,000 restitution fine was "a significant deviation from the negotiated terms of the plea bargain" (*Walker, supra*, at p. 1029), and reduced the fine to the minimum (*id.* at p. 1030). The court held that, under the circumstances, no more than the mandatory minimum restitution

fine could be imposed. (*Walker, supra*, 54 Cal.3d at pp. 1026-1029.)

Here, however, defendant signed a written plea agreement that *did* include the *restitution fine*. Specifically, the plea agreement stated: "I understand that I may be ordered to make restitution and to pay a restitution fine of \$100 to \$1,000 for a misdemeanor, or \$200 to \$10,000 for a felony, unless the Court finds compelling and extraordinary reasons not to impose the fine. . . ." Thus, unlike *Walker*, defendant "could not reasonably have understood his negotiated disposition to signify that *no* substantial restitution fine would be imposed." (*People v. Crandell* (2007) 40 Cal.4th 1301, 1310, italics added.)

Defendant complains that the plea form's use of the word "may" did not alert him to the fact that a restitution fine within the statutory range is mandatory, but rather suggests that the fine is discretionary. We find this argument unavailing. The language of the form used here clearly references the restitution fine and indicates that the parties intended to leave the amount of any restitution fine that would be imposed to the discretion of the trial court. (*Crandell, supra*, 40 Cal.4th at p. 1309.)

Moreover, our Supreme Court recently overruled *Walker* to the extent it held that a trial court violates the terms of a plea agreement if it imposes a restitution fine in excess of the mandatory minimum when the plea agreement is silent on the issue

of the restitution fine. (*People v. Villalobos* (2012)  
54 Cal.4th 177.)

In *Villalobos*, the defendant entered into a negotiated resolution. Nothing was said by the parties or the trial court about a restitution fine during the change of plea colloquy. At the time of sentencing, the trial court imposed a \$4,000 restitution fine and imposed, but stayed, a parole revocation restitution fine in the same amount. On appeal, the defendant contended, as defendant does here, that imposition of the restitution fine violated his plea agreement. Our high court held, "failure to address the amount of a restitution fine in plea negotiations or during the plea colloquy does not transform imposition of such a fine into a violation of the plea agreement. Instead, where neither the parties nor the trial court have specified the fine amount in the context of a plea bargain, '[t]he restitution fine shall be set at the discretion of the court . . . .' ([Pen. Code, ]§ 1202.4, subd. (b)(1).) Because no specific amount of fine was expressly negotiated or otherwise made a part of the plea agreement here, it cannot be said that the \$4,000 restitution fine and \$4,000 parole revocation fine imposed more punishment than defendant bargained for." (*Villalobos, supra*, 54 Cal.4th at pp. 185-186.)

Here, as we have noted, defendant was informed of the possibility of a restitution fine by language indicating the court may impose a fine within the statutory parameters. He did not object when the trial court imposed a fine of \$600, an amount well within the statutory range indicated in the plea

form. We conclude the trial court did not violate the terms of the plea agreement by imposing the \$600 restitution fine.

**DISPOSITION**

The judgment is affirmed.

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MURRAY, J.

We concur:

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RAYE, P. J.

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DUARTE, J.